

June 3, 2005

Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

Docket Number: CC Docket No. 02-6
Re: Request for Review

To Whom it May Concern:

This letter is a formal appeal to the Schools and Libraries Division (SLD) decision of April 5, 2005 to deny the Newburgh Enlarged City School District form 471 application 425779. The original appeal stated that the district could not find requests for information that went unanswered and continued by stating that it was possible that district responses were inadvertently misrouted by the district to PIA reviewers due to the fact that Year 6 and Year 7 applications were being reviewed simultaneously by two different PIA personnel.

The SLD, in its decision of April 5, 2005, denied the district's appeal stating that the district was given a fair opportunity to respond to PIA's inquiries and chose not to do so. It is further stated by the SLD that an eligibility determination cannot be made without a proper response by the district that addresses these inquiries. The inquiries that allegedly went unanswered were sent by the SLD to the district on two separate occasions. The first time that the request was sent was on April 23, 2004 and followed by a second request made on May 4, 2004.

It was only after receiving the SLD's denial that the district was able to see which questions went unanswered. The original appeal stated that the district thought that perhaps the questions were answered but were sent to the wrong PIA reviewer. The questions posed on May 4, 2004 that relate to the district's Year 7 application were similar in nature to those posed in both April and May that relate to the district's Year 6 application. These questions included clarification on Non-Instructional Facilities as well as requests for letters of agencies. All questions related to Year 6 were answered and the district subsequently received approval. Furthermore, FRN 1177409 is for identical services from the same service provider under FRN 1016680 which has been approved for Year 6 funding.

We therefore respectfully request that the FCC review the SLD's decision for FRN 1177409. Questions related to this FRN were addressed but were

inadvertently sent to the reviewer of the Year 6 application. Furthermore, we do not agree with the SLD's assertion that a funding determination could not be rendered with the information that was on hand. The only remaining question, out of scores of questions, associated with this FRN pertained to the non-instructional facility that was listed on the district's Block 4 section of the Form 471.

It should be further noted that we are not appealing decisions related to the other FRN (specifically FRN 1177486) that was denied by the SLD on April 5, 2005 because we agree that questions related to that FRN were not addressed.

To summarize, we do not believe that FCC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd. 4520, DA 03-764, 6 (rel. Mar. 13, 2003) applies to this situation and formal appeal. The district was in the process of simultaneously addressing questions related to both Year 6 and Year 7 funding requests in which similar funding requests were being reviewed. This task was time consuming and frustrating for the district and we assume the SLD. All the questions that were posed for FRN 1177409 were also asked during the same time frame for FRN 1016680. It remains our assertion that we inadvertently sent responses to questions related to Funding Year 7 to the reviewer for Funding Year 6 and subsequently believed that all of the issues related to the review of FRN 1177409 had been sent. It is furthermore believed that the SLD had significant amounts of data to make a determination on eligibility even if this remaining question had not been answered.

In closing, we would be remiss if we did not state how important this program and funding is to our district as well as the respect we have for everyone within the SLD. We look forward to your response and hope that you will look favorably upon this appeal. We can be reached to discuss this matter by either phone or email.

Best Regards

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